

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

April 6, 2009

N440 - State Mail  
Gary E. Jefferson  
SBI NO.  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**RE: State v. Gary E. Jefferson  
Defendant ID No. 0604018844 (R-2)**

Dear Mr. Jefferson:

For the reasons stated below, the Motion for Postconviction Relief you filed on March 26, 2009, is denied because it is procedurally barred.

On December 4, 2006, you pled no contest to rape in the third degree and guilty to first degree criminal solicitation. The Court declined the request for immediate sentencing. The Court ordered an updated TASC report and requested information from the Investigative Services Office.

On December 19, 2006, you were sentenced to a total period of thirty-three (33) years, suspended after serving nine (9) years with decreasing levels of supervision. Your conviction was affirmed on direct appeal. *Jefferson v. State*, 2006 WL2600542 (Del. Super. Sept. 10, 2007).

In April 2008, you filed a Motion for Postconviction Relief alleging that your trial attorney was ineffective. That relief was denied by Superior Court and affirmed recently by the Supreme Court. *Jefferson v. State*, 2009 WL 252331, (Del. Feb. 4, 2009). The mandate was returned from the Supreme Court on February 20, 2009. Now, just a month later, you filed your second Motion for Postconviction Relief.

In this motion you allege that your attorney was ineffective because he had conversations with a former state prosecutor and present day employee of the Family Court in violation of the attorney-client confidentiality. You argue this denied your right to effective assistance of counsel. In an exhibit, you have attached a letter dated January 27, 2009, from your trial attorney indicating that he vaguely remembers a

conversation between you, trial counsel, and the third party. That third party is not an employee of the Family Court but an attorney in the Public Defender's Office. The gist of your attorney's recollection is that there was a review with an experienced attorney as to the plea negotiations and whether or not to take the deal. You do not offer why this was a mistake or how you were prejudiced.

This ground is barred pursuant to Rule 61(i)(1) in that you had one year from the date the Supreme Court affirmed your direct appeal to file an application with this Court pursuant to Rule 61. Your conviction was affirmed in September, 2007, and therefore, this present claim comes too late.

This ground is also barred pursuant to Rule 61(i)(2) in that it is a repetitive motion and this ground could have been asserted in your first postconviction application.

Finally, it is barred under Rule 61(i)(3) since it was not asserted either before the trial court, the Supreme Court on direct appeal, or in the trial court in the first Rule 61 application. It is barred because you have shown no cause for procedural default, i.e., not bringing it earlier, nor have you shown any prejudice.

In summary, this ground is denied.

In Ground Two, you allege "excessive sentencing" in that the Judge imposed a harsher sentence than was recommended in the plea negotiations and plea agreement. You allege the Court had a biased opinion of you which interfered in the Court's ability to be fair.

This ground is likewise procedurally barred as it comes too late under Rule 61(i)(1), is a repetitive motion under Rule 61(i)(2), and there has been no explanation for not raising this earlier, nor a violation of your rights under Rule 61(i)(3) as discussed above. In summary, it is procedurally barred.

You have not established the Court sentenced you with a closed mind or a biased opinion. You were sentenced on rape in the third degree as well as for criminal solicitation in attempting to hire another person to kill the complaining witness, i.e., the victim of the rape. After reviewing the recommendation, the Court requested more information, including information from TASC as to your background, and information from the Presentence Office. As was noted by the Court on the day of your sentencing, you have a long history of drinking and fighting. Your conviction history included felonies and seven DUI's. The Court noted the following factors: your custody status at the time of your sentence, your prior violent conduct, and a lack of amenability to lesser sanctions due to a failed treatment history. There is no merit in your claim that the Court was biased against you.

In Ground three, you allege a violation of ineffective assistance of counsel because your attorney was not prepared for trial and gave you erroneous advice as to the plea bargain. You allege that although your attorney was successful in a Motion in Limine, you ultimately took his advice as to a plea bargain, denying you "full adversarial testing of guilt at trial". This claim is barred pursuant to Rule 61(i)(1) as it comes too late; Rule 61(i)(2) that it is repetitive and could have been asserted earlier; and Rule 61(i)(3)

in that you have not asserted any reasons for not raising this claim earlier, nor have you asserted any prejudice. Therefore, this claim is procedurally barred.

Alternatively, I note that the Court has reviewed the plea colloquy of December 4, 2006. I conclude that you knowingly, voluntarily, and intelligently entered a guilty plea by way of a no contest plea to the rape in the third degree and an acknowledgment of guilt as to the criminal solicitation. You were under oath and fully answered the Court's questions and advised that you were satisfied with counsel and had no complaints. You asked me to accept the plea. In your present petition, you do not allege in what way your attorney was unprepared or how that had anything to do with your decision. To the contrary, what you have presented in your motion is that your attorney and you consulted with another experienced attorney as to the plea negotiations. You also note that your attorney successfully prosecuted a Motion in Limine keeping certain expert opinions out of evidence. You do nothing other than make a conclusory observation that your attorney was unprepared. This ground is denied also on its merits.

For the reasons aforesated, the Defendant's second Motion for Postconviction Relief.

**IT IS SO ORDERED.**

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

baj

cc: Prothonotary  
Department of Justice